



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DALTON BROCK,

Plaintiff,

-against-

CORRECTION OFFICER M. LECLAIR, and SERGEANT
J. WHITNEY,

Defendants.

**STIPULATION AND
ORDER PURSUANT TO
RULE 41(a)**

9: 12-CV-00808
(TJM)

WHEREAS no party hereto is an infant or incompetent person for whom a committee has been appointed, and no person not a party has an interest in the subject matter of the action, and

WHEREAS the parties are desirous of settling and discontinuing this action,

IT IS HEREBY STIPULATED AND AGREED by and between the Plaintiff Dalton Brock and the Defendants Michael McClair and Jody Whitney, through their respective attorneys, the above-entitled action be and the same hereby is settled on the particular circumstances of this case, on the following terms and conditions, which it is agreed are of and shall have no legal precedential value in any other case either between the parties to this case or any other parties:

1. Following the execution of this stipulation and its being so-ordered by the Court, the State of New York shall issue a check in the amount of \$190,000, payable jointly to "Dalton Brock and Stoll Glickman & Bellina, LLP" and sent to Plaintiffs' attorney at the following address:

Nicholas Mindicino, Esq.
Stoll Glickman & Bellina, LLP
475 Atlantic Avenue 3rd Floor
Brooklyn, NY 11217

2. This lump sum payment will be made in full satisfaction of any and all claims for compensatory and punitive damages, attorney's fees, and costs in this action.
3. Payment by Defendants of the amount specified in paragraph 1 is conditioned on the approval of all appropriate state officials in accordance with the provisions for indemnification under section 17 of the New York Public Officers Law. In the event that this condition is not met, this stipulation will be rendered void and the action will be reinstated to the court's calendar. In the event that the action is reinstated to the Court's calendar, the parties agree to waive their right to a jury trial with respect to the amount of punitive damages, and consent to the determination of that issue by the Court.
4. Payment of the amount referenced in paragraph 1 will be made within 90 days after the approval of this stipulation by the Court and receipt by counsel of a copy of the so-ordered stipulation.
5. In the event that the terms of paragraph 3 are satisfied, but payment is not made within the applicable period set forth in paragraph 4, interest shall then begin to accrue on the outstanding principal balance at the federal statutory rate.
6. This settlement does not constitute a determination of, or admission by any party to any of the underlying allegations, facts or merits of their respective positions.
7. Subject to the conditions set forth in Paragraph 3, except for any proceedings to enforce the terms of this agreement, the Plaintiff hereby discontinues this action with prejudice, and discharges and releases Defendants and the State of New York, including its agencies, subdivisions, employees, private contractors or assignees, of any and all claims, demands, or causes of action, known or unknown, now existing or hereafter arising, whether presently asserted or not, which relate in any way to the subject matter of this action, and further agrees to discontinue and/or not to commence or to pursue in any court, arbitration

or administrative proceeding, any litigation or claims against the Defendants and others released hereby pertaining to the underlying facts, circumstances or incidents that gave rise to the aforementioned action, or any results of the aforementioned facts, circumstances or incidents.

8. Subject to the conditions set forth in Paragraph 3, this action is hereby discontinued with prejudice pursuant to Rule 41(a) of the Federal Rules of Civil Procedure.

Dated: June 27, 2014
Brooklyn, NY

STOLL GLICKMAN & BELLINA, LLP

By: Nicholas Mindicino
Nicholas Mindicino, Esq.
475 Atlantic Avenue 3rd Floor
Brooklyn, NY 11217
Bar Roll No. 517386
Counsel for Plaintiff
Telephone No. (718) 852-3710

Dated: June 30, 2014
Albany, New York

ERIC T. SCHNEIDERMAN
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Attorney for Defendants LeClair and Whitney
The Capitol
Albany, New York 12224-0341

By: David B. Roberts
David B. Roberts
Assistant Attorney General, of Counsel
Bar Roll No. 102455
Telephone: (518) 474-6801

SO ORDERED: 7/7/14

Thomas J. McAvoy
HON. THOMAS J. MCAVOY
Senior Judge, United States District Court
Northern District of New York